

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

United States of America,)	
)	Cr. No.: 7:08-cr-01219-GRA-1
)	
v.)	
)	<u>ORDER</u>
Starks Fincher, Jr.,)	(Written Opinion)
)	
Defendant.)	
)	

This matter comes before the Court on Defendant Starks Fincher, Jr.'s ("Defendant") motion to compel the Government to file a motion to reduce his sentence pursuant to Rule 35(b)(2) of the Federal Rules of Criminal Procedure for substantial assistance that he allegedly provided in investigating or prosecuting another person. For the reasons stated herein, this Court denies Defendant's motion.

Background

On April 3, 2009, Defendant pled guilty to possession with intent to distribute five grams or more of cocaine base (commonly known as "crack" cocaine), in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B); felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), and 924 (e); and possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A). ECF No. 46. Subsequently, on August 18, 2009, this Court sentenced Defendant to a total term of

262 months imprisonment and five (5) years of supervised release. ECF No. 60. Defendant filed the present motion on January 22, 2013.¹

Standard of Review

Plaintiff brings this claim *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. See *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. See *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam).

Discussion

It is well-settled that the decision to file a Rule 35(b) motion is a matter generally left to the government's discretion. See Fed. R. Crim. P. 35(b); *United States v. Dixon*, 998 F.2d 228, 230 (4th Cir. 1993). However, “federal district courts have authority to review a prosecutor’s refusal to file a substantial-assistance motion and to grant a remedy if they find that the refusal was based on an unconstitutional motive.” *Wade v. United States*, 504 U.S. 181, 185–86 (1992). “[A] claim that a defendant merely provided substantial assistance will not entitle a defendant to a remedy or even to discovery or an evidentiary hearing.” *Id.* at 186. A defendant must make a “substantial threshold showing” of improper motive on the part of the government. *Id.*

Out of an abundance of caution, the Court has contacted the U.S. Attorney’s Office and requested information on any assistance Defendant has provided. The Court

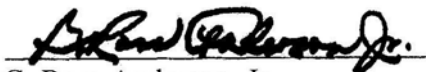
¹ Prisoner petitions are deemed filed at the time that they are delivered to prison authorities for mailing to the court clerk. *Houston v. Lack*, 487 U.S. 266, 276 (1988).

is informed that Defendant has not provided any unrewarded assistance to the government.

Moreover, Defendant does not allege or claim that the government relies on bad faith, improper, or unconstitutional motives in refusing to make a Rule 35(b)(2) motion to reduce defendant's sentence. He merely asserts that he has provided substantial assistance by participating in police investigations. Therefore, he has not made the required "substantial threshold showing." As the government has filed no motion in this matter, this Court is unable to grant a reduction at this time.

IT IS THEREFORE ORDERED that Defendant's Motion to Compel is DENIED.

IT IS SO ORDERED.


G. Ross Anderson, Jr.
Senior United States District Judge

February 4, 2013
Anderson, South Carolina

NOTICE OF RIGHT TO APPEAL

Pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure, Plaintiff has the right to appeal this Order within fourteen (14) days from the date of its entry. Failure to meet this deadline, as modified by Rule 4 of the Federal Rules of Appellate Procedure, **will waive the right to appeal.**